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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,119	01/30/2004	Percy Ivan Whitmore	PW-001	8737

7590 08/30/2007  
Percy Ivan Whitmore  
4638 East Mountain Vista Drive  
Phoenix, AZ 85048

EXAMINER
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EL ARINI, ZEINAB

ART UNIT	PAPER NUMBER
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1746

MAIL DATE	DELIVERY MODE
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08/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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101 769119

EXAMINER
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ART UNIT	PAPER
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20070828

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

This is in response to the Applicant's fax of August 27, 2007, showing evidence that a reply to the February 6, 2007 Restriction Requirement was timely sent to the Office. The above mentioned fax is attached to this paper. The attached fax includes a copy of a letter that was supposedly mailed to the Office on February 26, 2007. However, this letter does not reference the Restriction Requirement or any particular Office Action. Upon review of the evidence provided, there is not enough evidence in the papers to prove that there was a bona fide attempt to respond to the February 6, 2007 Restriction Requirement. Furthermore, there is no clear evidence that the reply/letter was timely filed with the Office. As per MPEP 711.03(c), such evidence can be demonstrated by the following:

Applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides prima facie evidence that the reply was timely filed. See MPEP § 503. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt.

Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

37 CFR 1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 CFR 1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval

(PAIR) system for the status of the correspondence before notifying the Office.  
See MPEP § 512.

Since the Applicant's evidence is not sufficient to show that there was a bona fide attempt to respond to the February 6, 2007 Restriction Requirement and that there is no clear evidence that the reply/letter was timely filed with the Office, the application is considered Abandoned for failure to respond to the February 6, 2007 Restriction Requirement.

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

Since no time remains for applicant to obtain an extension of the period for reply by filing a petition under 37 CFR 1.136(a), this application is abandoned. Applicant is advised that the abandonment of this application may only be overcome by filing a petition to revive under 37 CFR 1.137. A petition to revive may be appropriate if applicant's failure to reply was either unavoidable or unintentional, as set forth below.

#### A. Failure to reply was unavoidable.

A petition to revive an abandoned application on the grounds that the failure to reply was unavoidable (37 CFR 1.137(a)) must be accompanied by: (1) the required reply (which has been filed); (2) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(d); and (4) the petition fee as set forth in 37 CFR 1.17(l). No consideration to the substance of a petition will be given until this fee is received.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable, as well as inadvertent. This must include: (1) a satisfactory showing that the cause of the delay resulting in failure to reply in timely fashion to the Office action was unavoidable; and (2) a satisfactory showing that the cause of any delay during the time period between abandonment and filing of the petition to revive was also unavoidable.

A terminal disclaimer and the terminal disclaimer fee is required under 37 CFR 1.137(d) if the application is: (1) a design application, (2) a utility application filed before June 8, 1995, or (3) a plant application filed before June 8, 1995. The terminal disclaimer must dedicate to the public a terminal part of the term of any patent granted the application equivalent to the period of abandonment of the application, and must also apply to any patent granted on any application containing a specific reference under 35 U.S.C. 120, 121 or 365(c) to the application for which revival is sought.

#### B. Failure to reply was unintentional.

A petition to revive an abandoned application on the grounds that the failure to reply was unintentional (37 CFR 1.137(b)) must be accompanied by: (1) the required reply (which has been filed); (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; (3) any terminal disclaimer required pursuant to 37 CFR 1.137(d) (see above discussion); and (4) the fee as set forth in 37 CFR 1.17(m). No consideration to the substance of a petition will be given until this fee is received. The Director may require additional information where there is a question whether the delay was unintentional.

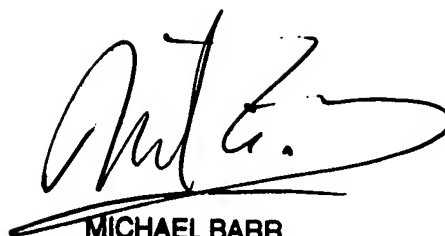
The required items and fees must be submitted promptly under a cover letter entitled "Petition to Revive."

Further correspondence with respect to this matter should be addressed as follows:

By mail:  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By FAX:  
571-273-8300  
Attn: Office of Petitions

Telephone inquiries with respect to this matter should be directed to the Office of Petitions Staff at (571) 272-3282. For more detailed information, see MPEP § 711.03(c).

A handwritten signature in black ink, appearing to read "Michael Barr", with a large, sweeping flourish extending from the end of the name.

**MICHAEL BARR**  
**SUPERVISORY PATENT EXAMINER**

Michael Barr  
SPE  
Art Unit: 1746

**INTELLIGENT CONSUMER PRODUCTS, INC.****FACSIMILE TRANSMITTAL SHEET**

TO Michael Barr	FROM: Percy Whitmore
COMPANY: USPTO	DATE : 08-27-07
FAX NUMBER: 571-273-1414	TOTAL NO. OF PAGES INCLUDING COVER: 2
PHONE NUMBER: 315-889-7724	SENDER'S PHONE NUMBER: 480-753-9394
RE: Letter Transmittal Application: 10/769,119	SENDER'S FAX NUMBER: 480-940-1147

☐ **URGENT** ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

**NOTES/COMMENTS:**

Mr. Barr:

We spoke on Friday, August 17, 2007 regarding the referenced application 10/769, 119. I was to provide you with my initial communications to your office regarding my patent application. Because I was needed to help family members with flooded homes, I had to delay faxing to you a hard copy of the letter sent to the USPTO.

I will contact you tomorrow to determine what actions I need to do to resolve any outstanding actions I must take. Please feel free to contact me at anytime, 480-940-9394 or percy@i-c-p-inc.com.

Thanks  




# **Intelligent Consumer Products, Inc.**

*smart products for smart people!*

phone: 480.753.9394 • fax: 480.940.1147

February 26, 2007

Percy Whitmore  
4638 E. Mountain Vista Dr.  
Phoenix, AZ 85048

United States Department Of Commerce  
United States Patent and Trademark Office  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Ref. Application 10/769,119

Dear Sir:

Per your telephone prerecorded instruction, please consider this letter as my request for further clarification of what action is needed to take regarding the referenced application number. Please have your agent to contact me at anytime at 480-753-9394 or email [percy@i-c-p-inc.com](mailto:percy@i-c-p-inc.com). I look forward to hearing from you.

Regards,

Percy Whitmore

P.O. Box 6526, Chandler, AZ 85246-6526